Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

NO. 76-1776

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

-vs-

ROOSEVELT PEABODY,

Defendant-Petitioner.

REPLY TO OPPOSITION TO PETITION

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GOVERNMENT'S OPPOSITION ASSERTS FACTUAL ERROR AND RAISES COMPLETELY NEW CONTENTION

At pages 7-8 of the Government's Opposition to Petition it is alleged that certain overt acts were alleged in the Indictment and that the proof at trial "in July 1974 Merritts, Kimbrough, and petitioner Peabody discussed the 'kickback' payments."

This allegation that the Government proved that in July 1974 Merritts, Kimbrough and petitioner Peabody discussed kickback payments is incorrect and totally without record support. No where is there record support for the allegation that petitioner Peabody discussed kickback payments with Merritts, Kimbrough and/or Tharp.

The Government appears to miss the point of Peabody's claim, namely, that he detrimentally relied upon the Government's representation and such detrimental reliance resulted in his not being able to defend himself at trial.

In addition, the Government in Footnote 7 at page 11 of its Opposition to Petition raises for the first time the claim that the District Court erred in granting Peabody a new trial with respect to Count XXI, choosing to refer to the District Court's action as a "windfall" to Peabody.

Thus, the Government neither comprehends nor addresses itself to the basic question which Peabody raises, namely, WHETHER OR NOT A CARDINAL TENET OF DUE PROCESS IS VIOLATED

WHEN BY ITS CONDUCT THE GOVERNMENT CAUSES A DEFENDANT TO RELY UPON CERTAIN GOVERNMENTAL REPRESENTATIONS AND SUCH REPRESENTATIONS ALTHOUGH INNOCENTLY MADE ARE FALSE AND THE DEFENDANT IS GROSSLY PREJUDICED THEREBY.

Clearly, the District Court knew of all defendants' reliance on the Government's representations as to the nature of the materials disclosed and the District Court felt that in fundamental fairness the Government had prejudiced Mr. Peabody's rights. More importantly, however, is the fact that even the Government trial attorney himself admitted surprise at the nature of the evidence which the Government put on to convict Mr. Peabody.

Peabody maintains that his rights were prejudiced by this Governmental misconduct, engaged in innocently, but also that he was prevented from testifying and defending himself as a result thereof.

Peabody reiterates his very strong belief that fundamental fairness dictates an opportunity for him to testify and defend himself. He did not cause the conduct about which he now complains.

Respectfully submitted,

Edward L. Welch